



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL-9961-09-OAR]

Review of the 2016 Oil and Gas New Source Performance Standards for New, Reconstructed, and Modified Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of review.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces it is reviewing the 2016 Oil and Gas New Source Performance Standards and, if appropriate, will initiate reconsideration proceedings to suspend, revise or rescind this rule.

DATES: [insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Mr. Peter Tsirigotis, Sector Policies and Programs Division (D205-01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (888) 627-7764; email address: *airaction@epa.gov*.

SUPPLEMENTARY INFORMATION: The EPA announces it is reviewing the 2016 Oil and Gas New Source Performance Standards (Rule) 81 FR 35,824 (June 3, 2016), and, if appropriate, will initiate proceedings to suspend, revise, or rescind it.

I. Background

Section 111 of the Clean Air Act authorizes the EPA to issue nationally applicable New Source Performance Standards (NSPS) limiting air pollution from “new sources” in source categories that cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. 42 U.S.C. 7411(b)(1). Under this authority, the EPA had regulated

sulfur dioxide emissions from natural gas processing and volatile organic chemicals (VOCs) from a number of equipment and operations at oil and gas facilities. 40 CFR part 60 subpart OOOO. In 2016, the EPA promulgated this Rule, which expanded the existing NSPS by requiring methane reductions from previously regulated sources and limiting methane and VOCs from other types of new oil and gas facilities never before regulated under Section 111.

Several state and industry petitioners challenged this Rule in the U.S. Court of Appeals for the District of Columbia alleging, *inter alia*, that EPA acted arbitrarily and capriciously, and in excess of statutory authority. *See, e.g., West Virginia v. EPA*, 16-1264, State Petitioners' Nonbinding Statement of the Issues to be Raised. These cases have been consolidated and are pending before the court. Many of these parties also submitted petitions for reconsideration of this Rule to EPA. The Agency has not yet acted on these petitions.

II. Initiation of Review Of This Rule

On March 28, 2017, President Trump issued an Executive Order establishing a national policy in favor of energy independence, economic growth, and the rule of law. The purpose of that Executive Order is to facilitate the development of U.S. energy resources—including oil and gas—and to reduce unnecessary regulatory burdens associated with the development of those resources. The President has directed agencies to review existing regulations that potentially burden the development of domestic energy resources, and appropriately suspend, revise, or rescind regulations that unduly burden the development of U.S. energy resources beyond what is necessary to protect the public interest or otherwise comply with the law. The Executive Order also directs agencies to take appropriate actions, to the extent permitted by law, to promote clean air and clean water while also respecting the proper roles of Congress and the States. This

Executive Order specifically directs EPA to review and, if appropriate, initiate proceedings to suspend, revise or rescind this Rule.

Pursuant to the Executive Order, EPA is initiating its review of this Rule and providing advanced notice of forthcoming rulemaking proceedings consistent with the President's policies. If EPA's review concludes that suspension, revision or rescission of this Rule may be appropriate, EPA's review will be followed by a rulemaking process that will be transparent, follow proper administrative procedures, include appropriate engagement with the public, employ sound science, and be firmly grounded in the law.

EPA's ability to revisit existing regulations is well-grounded in the law. Specifically, the agency has inherent authority to reconsider past decisions and to rescind or revise a decision to the extent permitted by law when supported by a reasoned explanation. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) ("*Fox*"); *Motor Vehicle Manufacturers Ass'n of the United States, Inc., et al. v. State Farm Mutual Automobile Insurance Co., et al.*, 463 U.S. 29, 42 (1983) ("*State Farm*"). Moreover, the Clean Air Act itself authorizes EPA to reconsider its rulemakings. 42 U.S.C. 7607(b)(1), (d)(7)(B). The Clean Air Act complements the EPA's inherent authority to reconsider prior rulemakings by providing the agency with broad authority to prescribe regulations as necessary. 42 U.S.C. 7601(a). The authority to reconsider prior decisions exists in part because EPA's interpretations of statutes it administers "are not carved in stone" but must be evaluated "on a continuing basis," *Chevron U.S.A. Inc. v. NRDC, Inc.*, 467 U.S. 837, 857-58 (1984). This is true when—as is the case here—review is undertaken "in response to . . . a change in administrations." *National Cable & Telecommunications Ass'n v. Brand X Internet Services*, 545 U.S. 967, 981 (2005). Importantly, such a revised decision need not be based upon a change of facts or circumstances. Rather, a revised rulemaking based "on a

reevaluation of which policy would be better in light of the facts” is “well within an agency’s discretion,” and “[a] change in administration brought about by the people casting their votes is a perfectly reasonable basis for an executive agency’s reappraisal of the costs and benefits of its programs and regulations.” *National Ass’n of Home Builders v. EPA*, 682 F.3d 1032, 1038 & 1043 (D.C. Cir. 2012) (citing *Fox*, 556 U.S. at 514-15; quoting *State Farm*, 463 U.S. at 59 (Rehnquist, J., concurring in part and dissenting in part)).

In conducting this review, EPA will follow each of the principles and policies set forth in the Executive Order, consistent with the EPA’s statutory authority. The Agency will reevaluate whether this Rule or alternative approaches are appropriately grounded in EPA’s statutory authority and consistent with the rule of law. The EPA will assess whether this Rule or alternative approaches would appropriately promote cooperative federalism and respect the authority and powers that are reserved to the States. EPA will also examine whether this Rule or alternative approaches effect the Administration’s dual goals of protecting public health and welfare while also supporting economic growth and job creation. EPA will review whether this Rule or alternative approaches appropriately maintain the diversity of reliable energy resources and encourage the production of domestic energy sources to achieve energy independence and security.

Additionally, EPA will assess this Rule and alternative approaches to determine whether they will provide benefits that substantially exceed their costs. In taking any actions subsequent

to this review, EPA will use its appropriated funds and agency resources wisely by firmly grounding in the statute its actions to protect public health and welfare.

Dated: March 28, 2017.

E. Scott Pruitt,
Administrator.